

## TITLE 41—PUBLIC CONTRACTS

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#### EXECUTIVE ORDER NO. 10925

Ex. Ord. No. 10925, Mar. 6, 1961, 26 F.R. 1977, which related to nondiscrimination provisions in Government contracts and established the President's Committee on Equal Employment Opportunity, was revoked by section 403 of Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, set out as a note under section 2000e of Title 42, The Public Health and Welfare.

#### CROSS REFERENCES

"Defense contractor" defined, see section 50 of this title.

Honorable discharge from land and naval forces as substitute for birth certificate required for defense employment, see section 49 of this title.

§§ 1 to 4a. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section 1, R.S. § 512; act Feb. 4, 1929, ch. 146, §§ 1, 3, 45 Stat. 1147, establish a return office for filing returns of contracts made by the Secretaries of War, Navy and Interior and appointed a clerk for this office.

Section 2, R.S. § 513, required the clerk to file all returns.

Section 3, R.S. § 514, required the clerk to keep an index book.

Section 4, R.S. § 515, required the clerk to provide certified copies of any returns for an established fee.

Section 4a, act Feb. 4, 1929, ch. 146, §§ 1, 3, 45 Stat. 1147, transferred returns office to the General Accounting Office and imposed duties relating thereto upon the Comptroller General.

§ 5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed \$10,000, (2) when the public exigencies require the im-

mediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1636 of Appendix to title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed \$500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only.

(R.S. § 3709; Aug. 2, 1946, ch. 744, § 9(a), (c), 60 Stat. 809; June 30, 1949, ch. 288, title VI, § 602(f), formerly title V, § 502(e), 63 Stat. 400, renumbered Sept. 5, 1950, ch. 849, §§ 6(a), (b), 8(c), 64 Stat. 583, and amended Aug. 28, 1958, Pub. L. 85-800, § 7, 72 Stat. 967; July 25, 1974, Pub. L. 93-356, § 1, 88 Stat. 390.)

#### REFERENCES IN TEXT

Section 1638 of Appendix to title 50, referred to in text, was repealed by act June 30, 1949, ch. 288, title VI, § 602(a)(1), formerly title V, § 502(a)(1), 63 Stat. 399, eff. July 1, 1949, renumbered by act Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583. See section 471 et seq. of Title 40, Public Buildings, Property, and Works.

#### CODIFICATION

R.S. § 3709 derived from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

Section is also set out in the District of Columbia Code, § 1-1110.

#### AMENDMENTS

1974—Pub. L. 93-356 substituted "\$10,000" for "\$2,500".

1958—Pub. L. 85-800 substituted "\$2,500" for "\$500" in first sentence.

1949—Act June 30, 1949, raised the limitation from \$100 to \$500.

1946—Act Aug. 2, 1946, among other changes, inserted cls. (1), (3), and (4), and made section applicable to sales and contracts of sale by the government, except in certain cases.

#### EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

#### EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

#### NATIONAL DEFENSE CONTRACTS

Negotiation of contracts for naval vessels, aircraft, and equipment, without advertisement or competitive bidding during temporary emergency, see section 1152 et seq. of Title 50, Appendix, War and National Defense.

#### SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

#### REPEAL OF EXEMPTIONS

Section 9(b) of act Aug. 2, 1946, provided: "Exemptions from section 3709, Revised Statutes [this section], in other law in amounts of \$100 or less are hereby repealed."

#### CROSS REFERENCES

Air pollution control grants, see section 7405 of Title 42, The Public Health and Welfare.

Architect of Capitol, purchasing supplies and procuring services not in excess of \$1,000, see section 6a-1 of this title.

Armed services, procurement of supplies and services, see sections 2301 et seq. and 2381 et seq. of Title 10, Armed Forces.

#### Conservation, National Park Service—

Hiring of work animals and equipment not required to comply with this section in certain cases, see section 171 of Title 16, Conservation.

Seeding and tree planting within national forests, open purchases without advertisement, see section 504 of Title 16.

Services and accommodations for public in national parks and national monuments, see section 17b of Title 16.

Contracts for transportation of moneys, bullion, coin, etc., see section 24 of this title.

Control of coal-mine fires, employment of equipment by Secretary of Interior without regard to this section, see section 556 of Title 30, Mineral Lands and Mining.

Definition of terms employed in this section, see section 5a of this title.

District of Columbia, advancements for public works and equipment excepted, see section 1563 of Title 42, The Public Health and Welfare.

Farm Credit Administration, maintenance and disposal of properties by, see section 1141b of Title 12, Banks and Banking.

Farm Housing, service and supply contracts not exceeding \$300 unaffected by provisions of this section, see section 1480 of Title 42, The Public Health and Welfare.

Federal Deposit Insurance Corporation, Comptroller General authorized for purposes of audit thereof to employ by contract professional services of firms and organizations of certified public accountants without regard to this section, see section 1827 of Title 12, Banks and Banking.

#### Federal Power Commission—

Bonneville power project, purchase of supplies and services without advertisement, see section 832g of Title 16, Conservation.

Contracts for engraving, lithographing, and photolithographing, without advertisement for proposals, see section 825k of Title 16.

Fort Peck power project, purchase of supplies and services without advertisement, see section 833f of Title 16.

Fishery resources, authority of Secretary of Interior to contract to utilize state facilities and services without regard to this section, see section 757 of Title 16.

Highway research program, inapplicability of this section to contracts, see section 307 of Title 23, Highways.

House of Representatives, procurement of packing boxes, see section 100 of Title 2, The Congress.

#### Housing—

Contracts for hazard insurance and purchases by Federal Housing Commissioner, excepted, see sections 1703, 1710, and 1713 of Title 12, Banks and Banking.

Purchases and contracts by Housing and Home Finance Administrator, Federal Home Loan Bank Board, Federal Housing Commissioner, and Public Housing Commissioner excepted from this section, see section 1701c of Title 12.

Purchases and contracts for services or supplies under \$1,000 for national defense housing excepted from this section, see section 1750c of Title 12.

International health research, authority of President to contract with public and nonprofit private institutions and agencies and individuals in participating foreign countries without regard to provisions of this section, see section 2103 of Title 22, Foreign Relations and Intercourse.

Menominee Indian Reservation, supplies for operations on reservation, and sale of Indian-produced forest products, see section 6b of this title.

National defense education program, Commissioner's power to utilize services and facilities of public or nonprofit agencies without regard to this section, see section 581 of Title 20, Education.

National Fisheries Center and Aquarium, authority of Secretary of Interior to provide for vessels for specimen collecting purposes without regard to this section, see section 1052 of Title 16, Conservation.

National Science Foundation, contracts and other arrangements, see section 1870 of Title 42, The Public Health and Welfare.

Procurement of transportation services from common carrier, exception of, see section 10721 of Title 49, Transportation.

#### Public Printing—

Authority required to authorize publication of advertisements, notices, or proposals for any Executive Department, see section 3702 of Title 44, Public Printing and Documents.

Purchase of paper and materials for the Government Printing Office, see section 501 et seq. of Title 44.

Radium, purchase without regard to this section, see section 283 of Title 42, The Public Health and Welfare.

Railroad Retirement Board, services and supplies for, see section 361 of Title 45, Railroads.

Reconditioning of foreign merchant vessels acquired under emergency authority, see section 198 of Title 50, War and National Defense.

References to this section deemed references to section 252 of this title, see section 260 of this title.

Small Business Administrator, power to pursue assigned claims to final collection in connection with loans, see section 634 of Title 15, Commerce and Trade.

#### State Department—

Foreign service buildings, furnishings for without regard to this section, see section 295b of Title 22, Foreign Relations and Intercourse.

Foreign Service Institute, acquisition of realty and other property and equipment for without regard to this section, see section 4024 of Title 22.

International Labour Conference, printing and binding for without regard to this section, see section 272a of Title 22.

International Refugee Organization, funds available for expenditure without regard to this section, see section 289c of Title 22.

South Pacific Commission, printing and binding for without regard to this section, see section 280b of Title 22.

United Nations, printing and binding for without regard to this section, see section 287c of Title 22.

Stationery for United States Senate and House of Representatives, advertisement for sealed proposals, see section 106 of Title 2, The Congress.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 6a, 6a-1, 6a-2, 6b, 252, 250 of this title; title 2 sections 72a, 135a, 475, 604; title 5 sections 3109, 4105, 8709, 8714a, 8714b, 8714c, 8902; title 7 sections 67e-1, 4271, 1624, 3318; title 8 sections 1252, 1355; title 10 section 2314; title 12 sections 1141b, 1701z-2, 1703, 1710, 1713, 1739, 1747g, 1747k, 1749a, 1750c, 1788, 1827; title 15 sections 834, 2218, 2507, 2609, 2826; title 18 sections 17b, 171, 343b, 450j-1, 504, 580c, 590z-3, 594-5, 757, 916i, 961, 1052, 2104; title 16 section 4255; title 20 sections 1034, 1070d, 2012, 2106; title 21 section 872; title 22 sections 272a, 280b, 2801, 280k, 287e, 287r, 289c, 290b, 295b, 2103, 2179, 2509, 4024; title 23 sections 140, 307; title 24 sections 322, 324; title 28 sections 604, 624, 753; title 29 section 671; title 30 section 558; title 31 section 9105; title 33 sections 1123, 1254, 1705; title 38 sections 766, 806, 1820, 4101, 4202, 5022, 5070; title 40 sections 71a, 278a-7, 484, 809, 758; title 42 sections 242k, 242m, 263d, 282, 285, 287b, 289f-6, 292f, 295g-9, 295g-10, 296k, 300c-22, 300e-2, 300e-3, 300u, 1395u, 1532, 1543, 1563, 1592d, 1592h, 1670, 2051, 2061, 2063, 2075, 2098, 2210, 2293, 2295, 2310, 2349, 2362, 3211, 3535, 4061, 4082, 4101, 4372, 4565, 8616, 7403, 7404, 9812; title 43 section 1617; title 45 sections 361, 719; title 46 section 1295d; title 49 sections 10364, 10365, 10721; title 49 App. sections 1159, 1903, 2426; title 50 section 198; title 50 App. section 1918.

## § 5a. Definitions

The word "department" as used in this Act shall be construed to include independent establishments, other agencies, wholly owned Government corporations (the transactions of which corporations shall be subject to the authorizations and limitations of this Act, except that section 5 of this title shall apply to their administrative transactions only), and the government of the District of Columbia, but shall not include the Senate, House of Representatives, or office of the Architect of the Capitol, or the officers or employees thereof. The words "continental United States" as used herein shall be construed to mean the forty-eight States and the District of Columbia. The word "Government" shall be construed to include the government of the District of Columbia. The word "appropriation" shall be construed as including funds made available by legislation under section 9104 of title 31.

(Aug. 2, 1946, ch. 744, § 18, 60 Stat. 811.)

## REFERENCES IN TEXT

This Act, referred to in text, means act Aug. 2, 1948, ch. 744, 60 Stat. 806. For complete classification of this Act to the Code see Tables.

## CODIFICATION

"Section 9104 of title 31" was substituted in text for "section 104 of the Government Corporation Control Act, approved December 8, 1945 [31 U.S.C. 849]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 73b-4 of title 5 prior to the general revision and reenactment of Title 5, Government Organization and Employees by Pub. L. 89-554, Sept. 6, 1966 80 Stat. 378.

§ 3. Repealed. Oct. 31, 1951, ch. 654, § 1(98) to (105), 65 Stat. 705

Section, acts Oct. 10, 1940, ch. 851, § 1, 54 Stat. 1109; June 28, 1941, ch. 258, titles II, III, IV, 55 Stat. 281, 289, 292, 302; June 6, 1942, ch. 396, § 1, 58 Stat. 347;

July 2, 1942, ch. 472, titles II, III, IV, 56 Stat. 483, 500, 505; June 28, 1943, ch. 173, titles I, II, 57 Stat. 236, 243; June 26, 1944, ch. 277, title I, § 101, title II, § 201, 58 Stat. 351, 358; June 13, 1945, ch. 169, § 1, 59 Stat. 256; July 1, 1946, ch. 530, § 101, 60 Stat. 405; June 30, 1947, ch. 168, title II, § 204, 61 Stat. 208; June 30, 1949, ch. 288, title I, §§ 103, 194(a), 63 Stat. 380, which excepted from the provisions of section 5 of this title a number of specified Government departments and agencies, when purchases or services were not in excess of certain specified amounts up to \$500.

Another provision of title III of act July 2, 1942, ch. 472, 56 Stat. 493, which also had been shown as one of the sources of this former section, made an exception with respect to purchases or services rendered for the Office of the Administrator of Civil Aeronautics, when the aggregate amount involved did not exceed \$106. That provision was not repealed, but, if it did not expire with that act, which was an appropriation act, it was superseded by section 5 of this title, as amended.

A prior section 6, acts Feb. 27, 1893, ch. 168, 27 Stat. 485; Mar. 1, 1899, ch. 325, 30 Stat. 957; Mar. 2, 1911, ch. 192, 36 Stat. 975; May 18, 1916, ch. 125, § 1, 39 Stat. 128; Mar. 1, 1919, ch. 86, § 1, 40 Stat. 1262; May 29, 1920, ch. 214, § 1, 41 Stat. 677; June 12, 1922, ch. 218, 42 Stat. 638; Feb. 13, 1923, ch. 72, 42 Stat. 1244; Feb. 15, 1934, ch. 13, § 1, 46 Stat. 351, which related to exceptions to the requirements of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111. See sections 5, 6a, and 6b of this title.

§ 6a. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; limited to particular agencies under specified circumstances

Section 5 of this title shall not be construed to apply under any appropriation Act to the following departments and independent offices under the circumstances specified herein:

(a) American Battle Monuments Commission—to any leases in foreign countries for office or garage space.

(b) to (e) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(f) The Bureau of Interparliamentary Union for Promotion of International Arbitration—to stenographic reporting services by contract if deemed necessary.

(g) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(h) Department of State—when the purchase or service relates to the packing of personal and household effects of Diplomatic, Consular, and Foreign Service officers and clerks for foreign shipment.

(i) Repealed. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

(j) The International Committee of Aerial Legal Experts—to stenographic and other service by contract as deemed necessary.

(June 12, 1917, ch. 27, § 1, 40 Stat. 144; May 13, 1926, ch. 204, § 1, 44 Stat. 547; Oct. 10, 1940, ch. 851, § 2, 54 Stat. 1110; June 28, 1941, ch. 259, § 1, 55 Stat. 344; Oct. 31, 1951, ch. 654, §§ 1(106)-(108), 8(8), (9), 4(9), 65 Stat. 705, 708, 709; July 1, 1957, Pub. L. 85-75, § 101, 71 Stat. 251.)

## CODIFICATION

Opening par., and subsecs. (a), (f), (h), and (j) of this section are from act Oct. 10, 1940, § 2, opening par., and pars. (a), (f), and (j). Remainder of paragraphs of

section 2 are repealed. See 1951 amendment note set out under this section.

Subsec. (o) of this section, which was from Act May 13, 1926, ch. 294, § 1, 44 Stat. 547, made section 5 of this title inapplicable to the Architect of the Capitol in the purchase of supplies and equipment and procurement of services when the aggregate amount thereof did not exceed \$1,000 in any instance and was omitted as superseded by section 6a-1 of this title.

Subsec. (p) of this section, which was from act June 12, 1917, ch. 27, § 1, 40 Stat. 144, made section 5 of this title inapplicable to expenditures not exceeding \$50 by the United States Geological Survey and was repealed by act Oct. 31, 1951, ch. 654, § 1(106), 66 Stat. 705.

#### PRIOR PROVISIONS

A prior section 6a, acts Jan. 25, 1929, ch. 102, title IV, 45 Stat. 1136; Apr. 18, 1930, ch. 184, title IV, 46 Stat. 215; Feb. 23, 1931, ch. 280, title IV, 46 Stat. 1352; July 1, 1932, ch. 861, title IV, 47 Stat. 520; Mar. 1, 1933, ch. 144, title IV, 47 Stat. 1409; Apr. 7, 1934, ch. 104, title IV, 48 Stat. 568; Mar. 22, 1935, ch. 39, § 1, 49 Stat. 102; May 15, 1936, ch. 405, § 1, 49 Stat. 1347; June 16, 1937, ch. 859, § 1, title IV, 50 Stat. 298; Apr. 27, 1938, ch. 180, title IV, § 1, 52 Stat. 285; June 29, 1939, ch. 249, § 1, 53 Stat. 921; June 26, 1940, ch. 428, title I, 54 Stat. 575, which excepted the Department of Labor from the provisions of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

#### AMENDMENTS

1957—Subsec. (o). Pub. L. 85-75 substituted "\$1,000" for "\$500".

1951—Subsec. (a). Act Oct. 31, 1951, § 3(8), struck out "to any purchases when the aggregate amount involved does not exceed \$500, nor" preceding "to any leases".

Subsec. (b). Act Oct. 31, 1951, § 1(107), repealed subsec. (b) which related to the Botanic Garden.

Subsec. (c). Act Oct. 31, 1951, § 1(107), repealed subsec. (c) which also related to the Botanic Garden.

Subsec. (d). Act Oct. 31, 1951, § 1(107), repealed subsec. (d) which related to the Bureau of the Budget.

Subsec. (e). Act Oct. 31, 1951, § 1(107), repealed subsec. (e) which related to the Bureau of Foreign and Domestic Commerce.

Subsec. (g). Act Oct. 31, 1951, § 1(107), repealed subsec. (g) which related to the Department of the Interior.

Subsec. (h). Act Oct. 31, 1951, § 3(9), struck out "to any purchase or service when the aggregate amount does not exceed \$100, or with respect to articles, materials, or supplies for use outside the United States when the aggregate amount involved does not exceed \$300; or" preceding "when the purchase".

Subsec. (i). Act Oct. 31, 1951, § 1(107), repealed subsec. (i) which related to the Federal Communications Commission.

Subsec. (k). Act Oct. 31, 1951, § 1(107), repealed subsec. (k) which related to the Medical Department of the Army.

Subsec. (l). Act Oct. 31, 1951, § 1(107), repealed subsec. (l) which related to the Social Security Board.

Subsec. (m). Act Oct. 31, 1951, § 1(107), repealed subsec. (m) which related to the Bureau of Mines.

Subsec. (n). Act Oct. 31, 1951, § 1(107), repealed subsec. (n) which related to the Bureau of Reclamation.

Subsec. (o). Act Oct. 31, 1951, § 4(9), increased the maximum from \$200 to \$500.

1941—Subsec. (m). Act June 28, 1941, reaffirmed the provision respecting the Bureau of Mines.

#### REPEALS

Section 1(108) of act Oct. 31, 1951, repealed the proviso in section 1 of act June 28, 1941, ch. 259, 55 Stat. 344, cited as a credit to this section, which excepted expenditures not exceeding \$500 by the Bureau of Mines from section 5 of this title.

Section 1(106) of act Oct. 31, 1951, repealed the proviso in section 1 of act June 12, 1917, ch. 27, 40 Stat. 144, cited as a credit to this section, which excepted expenditures not exceeding \$50 by the United States Geological Survey from section 5 of this title.

Section 4(a) of act Oct. 10, 1940, provided for repeal of all prior laws, which are covered by that act and that any rights or liabilities existing under those repealed sections or parts of sections shall not be affected by their repeal.

#### LEASES FOR FOREIGN SERVICE OFFICES

Provisions contained in annual appropriation acts for the Department of State authorizing the Secretary of State to enter into leases for Foreign Service offices and grounds for periods not exceeding ten years without regard to section 5 of this title were made permanent, and are covered by section 2670 of Title 22, Foreign Relations and Intercourse.

#### BUREAU OF EMPLOYEES' COMPENSATION

Section 5 of this title shall not apply to any purchase or service of the Bureau of Employees' Compensation outside continental United States when the aggregate amount involved does not exceed \$500 under acts July 8, 1947, ch. 210, title II, § 201, 61 Stat. 254; June 14, 1948, ch. 465, title II, § 201, 62 Stat. 396; June 29, 1949, ch. 275, title II, § 201, 63 Stat. 284. This Bureau, with its functions, was transferred from the Federal Security Agency to the Department of Labor by Reorg. Plan No. 19, of 1950, § 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271, set out in the Appendix to Title 5, Government Organization and Employees.

#### GOVERNMENT-OWNED FURNITURE REMOVED TO WASHINGTON, D.C.

Act July 30, 1947, ch. 359, title I, § 101, 61 Stat. 594, provided in part: "That removal to the seat of government of Government-owned or leased furniture, equipment, supplies, and other property and household goods and personal effects of employees, and costs of restoration of leased office space when required, may be accomplished without regard to section 3709 of the Revised Statutes [section 5 of this title]".

#### SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

#### CROSS REFERENCES

Exemption of all purchases and contracts when the amount involved does not exceed \$500, see section 5 of this title.

General Services Administration, section inapplicable to procurement of property or services by, see section 260 of this title.

§ 6a-1. Architect of the Capitol, exception from advertisement requirements

On and after July 27, 1965, the purchase of supplies and equipment and the procurement of services for all branches under the Architect of the Capitol may be made in the open market without compliance with section 5 of this title in the manner common among businessmen, when the aggregate amount of the purchase or the service does not exceed \$10,000 in any instance.

(Pub. L. 89-90, § 101, July 27, 1965, 79 Stat. 276; Pub. L. 93-358, § 2, July 25, 1974, 88 Stat. 390.)

## PRIOR PROVISIONS

A prior section 6a-1, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, which related to the purchase of Indian supplies, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

## AMENDMENTS

1974—Pub. L. 93-356 substituted "\$10,000" for "\$2,500".

§ 6a-2. Architect of the Capitol, authority for personal services contracts with legal entities

Notwithstanding any other provision of law, the Architect of the Capitol is authorized to contract for personal services with any firm, partnership, corporation, association, or other legal entity in the same manner as he is authorized to contract for personal services with individuals under the provisions of section 5 of this title.

(Pub. L. 96-558, Dec. 19, 1980, 94 Stat. 3263.)

§ 6b. Miscellaneous exceptions from advertisement requirements

(a) Control of insects, pests, and grass diseases

Materials and equipment for the control of incipient or emergency outbreaks of insects, pests, or grass diseases, including grasshoppers, Mormon crickets, and chinch bugs, may be procured with any sums appropriated to carry out the provisions of sections 148 to 148e of title 7 without regard to the provisions of section 5 of this title, and the transportation thereof may be under such conditions and means as shall be determined by the Secretary of Agriculture to be most advantageous.

(b) Omitted

(c) Operations on Menominee Indian Reservation

All contracts for labor or supplies necessary for the carrying on of operations on the Menominee Indian Reservation pursuant to the Act of March 28, 1908 (35 Stat. 51), as amended, shall be exempt from the requirements of section 5 of this title.

(d) Sale of Indian produced forest products

The lumber and other forest products produced by Indian enterprises from the forests on Indian reservations may be sold under such regulations as the Secretary of the Interior may prescribe, without compliance with section 5 of this title.

(June 24, 1940, ch. 412, 54 Stat. 504; Oct. 10, 1940, ch. 851, § 3(a), (c), 54 Stat. 1111.)

## REFERENCES IN TEXT

Section 148b of title 7, included within the reference to sections 148 to 148e of title 7 in subsec. (a), was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111, and is covered by this section.

Act of March 28, 1908 (35 Stat. 51), referred to in subsec. (c), probably means act Mar. 28, 1908, ch. 111, 35 Stat. 51, which is not classified to the Cede.

## CODIFICATION

Subsec. (a) is from act Oct. 10, 1940.

Subsec. (b), act Oct. 10, 1940, relating to the obligations of the Civilian Conservation Corps, was omitted, because the Corps was liquidated June 30, 1944.

Subsec. (c) is from act Oct. 10, 1940.

Subsec. (d) is from act June 24, 1940, which was formerly classified to section 6mm of this title.

Subsec. (e), which related to the employment of experts or consultants in the Canal Zone, was from the General Government Matters Appropriation Act, 1962, Pub. L. 87-125, title III, § 301, Aug. 3, 1961, 75 Stat. 279, and was omitted as not repeated in subsequent appropriation acts.

## PRIOR PROVISIONS

A prior section 6b, acts Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1363; June 30, 1932, ch. 330, § 1, 47 Stat. 460; June 16, 1933, ch. 101, § 1, 48 Stat. 292; Mar. 28, 1934, ch. 102, title I, § 1, 48 Stat. 514; Feb. 2, 1935, ch. 3, § 1, 49 Stat. 11; Mar. 19, 1936, ch. 156, § 1, 49 Stat. 1173; June 28, 1937, ch. 396, 50 Stat. 336; May 23, 1938, ch. 259, § 1, 52 Stat. 418; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 532; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 131, which excepted the General Accounting Office from the provisions of section 5 of this title, was repealed by act Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111.

## TRANSFER OF FUNCTIONS

All functions of all officers, agencies and employees of the Department of Agriculture were transferred, with certain exceptions, to the Secretary of Agriculture by Reorg. Plan No. 2 of 1953, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out in the Appendix to Title 5, Government Organization and Employees.

## SIMILAR PROVISIONS

Provisions similar to former subsec. (e) were contained in the following prior appropriation acts:

May 13, 1960, Pub. L. 86-451, title II, § 201, 74 Stat. 101.

July 13, 1959 Pub. L. 86-88, title II, § 201, 73 Stat. 208.

June 25, 1958, Pub. L. 85-469, title II, § 203, 72 Stat. 236.

June 13, 1957, Pub. L. 85-52, title II, § 203, 71 Stat. 79, as amended Mar. 28, 1958, Pub. L. 85-352, ch. II, § 201, 72 Stat. 52.

June 20, 1956, ch. 415, title II, § 203, 70 Stat. 324.

June 30, 1955, ch. 253, title II, § 203, 69 Stat. 236.

June 30, 1954, ch. 425, § 104, 68 Stat. 335.

July 27, 1953, ch. 245, § 104, 67 Stat. 202.

July 11, 1952, ch. 669, § 104, 66 Stat. 584.

Oct. 24, 1951, ch. 556, § 104, 65 Stat. 622.

Sept. 6, 1950, ch. 896, ch. IX, § 103, 64 Stat. 730.

Oct. 13, 1949, ch. 688, § 4, 63 Stat. 852.

June 25, 1948, ch. 655, § 4, 62 Stat. 1026.

July 31, 1947, ch. 411, § 4, 61 Stat. 694.

May 2, 1946, ch. 247, § 4, 60 Stat. 167.

Mar. 31, 1945, ch. 45, § 4, 59 Stat. 45.

June 26, 1944, ch. 275, § 4, 58 Stat. 333.

June 2, 1943, ch. 115, § 4, 57 Stat. 99.

Apr. 28, 1942, ch. 240, § 5, 56 Stat. 225.

June 24, 1940, ch. 412, 54 Stat. 504.

§§ 6c to 6jj. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section 6c, acts June 22, 1936, ch. 689, § 1, 49 Stat. 1604; June 28, 1937, ch. 396, § 1, 50 Stat. 341; May 23, 1938, ch. 259, § 1, 52 Stat. 424; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 539; June 25, 1940, ch. 421, § 1, 54 Stat. 566, excepted the Rural Electrification Administration from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$100.

Section 6d, acts June 22, 1936, ch. 689, § 1, 49 Stat. 1605; June 28, 1937, ch. 396, § 1, 50 Stat. 344; May 23, 1938, ch. 259, § 1, 52 Stat. 426; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 540, excepted the Social Security Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$100.

Section 6e, acts May 14, 1937, ch. 180, title I, § 1, 50 Stat. 139; Mar. 28, 1938, ch. 55, § 1, 52 Stat. 123; May 6, 1939, ch. 115, § 1, title I, 53 Stat. 656; Mar. 25, 1940, ch. 71, title I, 54 Stat. 58, excepted the Treasury Department from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6f, acts June 16, 1937, ch. 359, title I, 50 Stat. 273; Apr. 27, 1938, ch. 180, title I, § 1, 52 Stat. 258; June 29, 1939, ch. 248, title I, 53 Stat. 896; May 14, 1940, ch. 189, title I, 54 Stat. 192, excepted the Department of State from the provisions of section 5 of this title when the aggregate amount involved did not exceed certain specified amounts.

Section 6g, acts June 16, 1937, ch. 359, title II, 50 Stat. 275; Apr. 27, 1938, ch. 180, title II, § 1, 52 Stat. 260; June 29, 1939, ch. 248, title II, 53 Stat. 898; May 14, 1940, ch. 189, title III, 54 Stat. 201, 203, excepted the Federal Bureau of Investigation from the provisions of section 5 of this title when the aggregate amount did not exceed \$50.

Section 6h, acts June 16, 1937, ch. 359, title III, 50 Stat. 285; Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 272, excepted the Bureau of Air Commerce from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$100.

Section 6i, acts June 28, 1937, ch. 396, § 1, 50 Stat. 335; May 23, 1938, ch. 259, § 1, 52 Stat. 417; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 532; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 124, excepted the Federal Trade Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6j, acts June 28, 1937, ch. 396, § 1, 50 Stat. 338; May 23, 1938, ch. 259, § 1, 52 Stat. 420; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 534; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 133, excepted the Interstate Commerce Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6k, acts June 28, 1937, ch. 396, § 1, 50 Stat. 339; May 23, 1938, ch. 259, § 1, 52 Stat. 421; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 536; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 135, excepted the National Archives from the provisions of section 5 of this title when the aggregate amount did not exceed \$50.

Section 6l, acts June 28, 1937, ch. 396, § 1, 50 Stat. 339; May 23, 1938, ch. 259, § 1, 52 Stat. 422; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 537; June 26, 1940, ch. 428, title IV, 54 Stat. 595, excepted the National Labor Relations Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6m, acts June 28, 1937, ch. 396, § 1, 50 Stat. 341; May 23, 1938, ch. 259, § 1, 52 Stat. 423; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 538; June 26, 1940, ch. 428, title VI, 54 Stat. 598, excepted the Railroad Retirement Board from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6n, acts June 26, 1937, ch. 396, § 1, 50 Stat. 342; May 23, 1938, ch. 259, § 1, 52 Stat. 425; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 539; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 136, excepted the Securities and Exchange Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6o, act Apr. 6, 1937, ch. 60, § 3, as added May 9, 1938, ch. 192, 52 Stat. 344, excepted control of insects and plant diseases from the provisions of section 5 of this title.

Section 6p, act May 23, 1938, ch. 259, § 1, 52 Stat. 417; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 531; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 124, excepted the Federal Power Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6q, acts June 25, 1938, ch. 681, title I, 52 Stat. 1117; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 535; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 134, excepted the Maritime Labor Board from the provisions of section 5 of

this title when the aggregate amount involved did not exceed \$100.

Section 6r, acts Mar. 16, 1939, ch. 11, § 1, 53 Stat. 527; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 116, excepted the Civil Aeronautics Authority from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$100.

Section 6s, acts Aug. 7, 1935, ch. 455, 49 Stat. 540; Feb. 11, 1936, ch. 40, 49 Stat. 1123; May 15, 1936, ch. 405, 49 Stat. 1316; June 16, 1937, ch. 359, 50 Stat. 267; Apr. 27, 1938, ch. 180, 52 Stat. 254; June 29, 1939, ch. 248, title I, 53 Stat. 892; May 14, 1940, ch. 189, title I, 54 Stat. 188, excepted the International Technical Committee of Aerial Legal Experts from the provisions of section 5 of this title.

Section 6t, act May 15, 1936, ch. 405, 49 Stat. 1315; June 16, 1937, ch. 359, 50 Stat. 287; Apr. 27, 1938, ch. 180, 52 Stat. 253; June 29, 1939, ch. 248, title I, 53 Stat. 891, excepted the Bureau of Interparliamentary Union for Promotion of International Arbitration from the provisions of section 5 of this title.

Section 6u, acts Feb. 20, 1920, ch. 270, § 1, 45 Stat. 1243; Apr. 19, 1930, ch. 201, § 1, 46 Stat. 243; Feb. 23, 1931, ch. 281, § 1, 46 Stat. 1370; Feb. 2, 1935, ch. 3, § 1, 49 Stat. 16; Mar. 10, 1936, ch. 156, § 1, 49 Stat. 1180; June 28, 1937, ch. 396, § 1, 50 Stat. 345; May 23, 1938, ch. 259, § 1, 52 Stat. 427; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 542; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 137, excepted the Tariff Commission (now the International Trade Commission) from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6v, acts June 28, 1937, ch. 396, § 1, 50 Stat. 331; May 23, 1938, ch. 259, § 1, 52 Stat. 412; Mar. 16, 1939, ch. 11, § 1, 53 Stat. 525; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 113, excepted the American Battle Monuments Commission from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$500.

Section 6v-1, act Apr. 18, 1940, ch. 107, § 1, 54 Stat. 113, excepted the American Battle Monuments Commission, when entering into leases in foreign countries, from the provisions of section 5 of this title.

Section 6w, acts June 16, 1938, ch. 464, 52 Stat. 750; June 30, 1939, ch. 253, title II, § 1, 53 Stat. 978; June 25, 1940, ch. 421, § 1, 54 Stat. 568, excepted the Farm Credit Administration from the provisions of section 5 of this title when the aggregate amount did not exceed \$50.

Section 6x, act Aug. 25, 1937, ch. 757, title I, 50 Stat. 759, excepted the United States Maritime Commission from the provisions of section 5 of this title when the aggregate amount did not exceed \$100.

Section 6y, acts Aug. 9, 1939, ch. 633, title I, § 1, 53 Stat. 1318; June 18, 1940, ch. 395, § 1, 54 Stat. 443, excepted the Bureau of Mines from the provisions of section 5 of this title when the aggregate amount did not exceed \$500.

Section 6z, act Apr. 18, 1940, ch. 107, § 1, 54 Stat. 112, excepted the Bureau of the Budget (now the Office of Management and Budget) from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6aa, act Apr. 18, 1940, ch. 107, 54 Stat. 118, excepted the Federal Communications Commission from the provisions of section 5 of this title when the aggregate amount did not exceed \$50.

Section 6bb, act Apr. 18, 1940, ch. 107, 54 Stat. 119, excepted the Federal Loan Agency from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6co, act Apr. 18, 1940, ch. 107, 54 Stat. 120, excepted the Federal Home Loan Bank from the provisions of section 5 of this title when the aggregate amounts involved did not exceed certain specified sums.

Section 6dd, act Apr. 18, 1940, ch. 107, 54 Stat. 131, excepted the General Accounting Office from the pro-



visions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6ee, acts Feb. 11, 1927, ch. 104, § 1, 44 Stat. 1081; Apr. 18, 1940, ch. 107, § 1, 54 Stat. 137, excepted the Tariff Commission (now the International Trade Commission) from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6ff, act May 14, 1940, ch. 189, title 1, 54 Stat. 189, excepted the International Boundary Commission, United States and Mexico, from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$500.

Section 6gg, act May 14, 1940, ch. 189, title IV, 54 Stat. 211, excepted the Administrative Office of the United States Courts from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6hh, act June 11, 1940, ch. 313, title I, 54 Stat. 290, excepted the Navy Department from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

Section 6ii, acts Jan. 25, 1929, ch. 102, title III, 45 Stat. 1119; Apr. 18, 1930, ch. 184, title III, 46 Stat. 198; Feb. 23, 1931, ch. 280, title III, 46 Stat. 1334; July 1, 1932, ch. 361, title III, 47 Stat. 502; Mar. 1, 1933, ch. 144, title III, 47 Stat. 1393; Apr. 7, 1934, ch. 104, title III, 48 Stat. 551; Mar. 22, 1935, ch. 39, § 1, 49 Stat. 90; May 15, 1936, ch. 405, § 1, 49 Stat. 1336; June 16, 1937, ch. 359, title III, § 1, 50 Stat. 287; Apr. 27, 1938, ch. 180, title III, § 1, 52 Stat. 273; June 29, 1939, ch. 248, title III, 53 Stat. 909, excepted the Bureau of Foreign and Domestic Commerce from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$100.

Section 6jj, acts May 13, 1926, ch. 294, § 1, 44 Stat. 548; Feb. 23, 1927, ch. 168, § 1, 44 Stat. 1157; May 14, 1928, ch. 551, § 1, 45 Stat. 528; Feb. 28, 1929, ch. 367, § 1, 45 Stat. 1397; June 6, 1930, ch. 407, § 1, 46 Stat. 516; Feb. 20, 1931, ch. 234, § 1, 46 Stat. 1186; June 30, 1932, ch. 314, § 1, 47 Stat. 393; Feb. 28, 1933, ch. 134, § 1, 47 Stat. 1362; May 30, 1934, ch. 372, § 1, 48 Stat. 828; July 8, 1935, ch. 374, § 1, 49 Stat. 471; Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 392; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, excepted the Botanic Garden, in the purchase of trees and plants, from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$300.

§ 6kk. Omitted

#### CODIFICATION

Section, acts Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 393; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, which excepted the Botanic Garden, in the purchase of supplies and equipment, from the provisions of section 5 of this title when the aggregate amount did not exceed \$50, was superseded by subsection (b) of section 6a of this title which was itself repealed by act. Oct. 31, 1951, ch. 654, § 1(107), 65 Stat. 705.

§ 6ll. Repealed. Oct. 10, 1940, ch. 851, § 4, 54 Stat. 1111

Section, act Apr. 22, 1926, ch. 171, § 1, 44 Stat. 314, excepted the National Advisory Committee for Aeronautics from the provisions of section 5 of this title when the aggregate amount involved did not exceed \$50.

§ 6mm. Transferred

#### CODIFICATION

Section, act June 24, 1940, ch. 412, 54 Stat. 504, which excepted forest products by Indian enterprises from the forests on Indian reservations, was transferred to subsec. (d) of section 6b of this title.

§§ 7 to 7d. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(29) to (31), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (h), 64 Stat. 583

Section 7, act June 17, 1910, ch. 297, § 4, 36 Stat. 531; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to advertisements and contracts for miscellaneous supplies for executive departments and other government establishments in Washington; Procurement Division in Department of Treasury; bond of contractor; and purchase or drawing of supplies.

Section 7a, act Feb. 27, 1929, ch. 354, § 1, 45 Stat. 1341; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to the consolidation and coordination of government purchases.

Section 7b, act Feb. 27, 1929, ch. 354, § 2, 45 Stat. 1342; Ex. Ord. No. 6166, § 1, June 10, 1933, as amended by Ex. Ord. No. 6623, Mar. 1, 1934, provided for requisition of supplies and reimbursement.

Section 7c, act Feb. 27, 1929, ch. 354, § 3, 45 Stat. 1342; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, provided for a general supply fund and reports and audits.

Section 7c-1, act May 14, 1935, ch. 110, § 1, 49 Stat. 234; Ex. Ord. No. 6166, § 1, eff. June 10, 1933, as amended by Ex. Ord. No. 6623, eff. Mar. 1, 1934, related to expenditures incidental to operation of government fuel yards.

Section 7d, act Feb. 27, 1929, ch. 354, § 4, 45 Stat. 1342, related to Secretary of Treasury's authority to prescribe regulations.

For similar subject matter, see section 201 et seq. of this title and sections 471 et seq. and 751 et seq. of Title 40, Public Buildings, Property, and Works.

#### EFFECTIVE DATE OF REPEAL

Repeal of sections effective July 1, 1949, see section 605 of act June 30, 1949.

#### § 8. Opening bids

Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

(R.S. § 3710.)

#### CODIFICATION

R.S. § 3710 derived from Res. Jan. 31, 1868, No. 8, 15 Stat. 246.

#### EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Inter-course.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252, 260 of this title.

§ 9. Repealed. Feb. 19, 1948, ch. 65, § 11(a), 62 Stat. 25

Section, R.S. § 3717, related to separate proposals for works or material or labor. See sections 2301 and 2303 to 2305 of Title 10, Armed Forces.



**EFFECTIVE DATE OF REPEAL**

Repeal of section effective 90 days after Feb. 19, 1948, see section 13 of act Feb. 19, 1948, ch. 65, 62 Stat. 26.

**§ 10. Omitted****CODIFICATION**

Section, act Mar. 3, 1875, ch. 133, § 2, 18 Stat. 455, related to preferential treatment of American material in contracts for public improvements, was superseded. See sections 10a to 10d of this title.

**§ 10a. American materials required for public use**

Notwithstanding any other provision of law, and unless the head of the department or independent establishment concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. This section shall not apply with respect to articles, materials, or supplies for use outside the United States, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(Mar. 3, 1933, ch. 212, title III, § 2, 47 Stat. 1520.)

**SHORT TITLE**

Sections 1 to 3 of act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, which are classified to sections 10a to 10c of this title, are popularly known as the Buy American Act.

**EXEMPTION OF FUNCTIONS**

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 10b, 10c, 10d, 42 of this title; title 10 section 2457; title 15 section 2507; title 19 sections 2512, 2513, 2516.

**§ 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements**

(a) Every contract for the construction, alteration, or repair of any public building or public work in the United States growing out of an appropriation heretofore made or hereafter to be made shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers, shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been

manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States except as provided in section 10a of this title: *Provided, however*, That if the head of the department or independent establishment making the contract shall find that in respect to some particular articles, materials, or supplies it is impracticable to make such requirement or that it would unreasonably increase the cost, an exception shall be noted in the specifications as to that particular article, material, or supply, and a public record made of the findings which justified the exception.

(b) If the head of a department, bureau, agency, or independent establishment which has made any contract containing the provision required by subsection (a) of this section finds that in the performance of such contract there has been a failure to comply with such provisions, he shall make public his findings, including therein the name of the contractor obligated under such contract, and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded to such contractor, subcontractors, material men, or suppliers with which such contractor is associated or affiliated, within a period of three years after such findings is made public.

(Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520.)

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 10c, 10d, 42 of this title; title 15 section 2507; title 19 sections 2512, 2513, 2516.

**§ 10c. Definition of terms used in sections 10a and 10b**

When used in sections 10a to 10c of this title—

(a) The term "United States", when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms "public use", "public building", and "public work" shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands.

(Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, Pub. L. 66-70, § 43, 73 Stat. 151; July 12, 1960, Pub. L. 86-624, § 28, 74 Stat. 419.)

**REFERENCES IN TEXT**

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

**CODIFICATION**

Words "the Philippine Islands" in subsec. (b) of this section were deleted as obsolete in view of recognition of independence of the Philippines by Proc. No. 2695, which was issued pursuant to section 1394 of Title 22,

Foreign Relations and Intercourse, and is set out as a note under section 1394.

#### AMENDMENTS

1960—Subsec. (b). Pub. L. 86-624 eliminated Hawaii.  
1959—Subsec. (b). Pub. L. 86-70 eliminated Alaska.

#### EFFECTIVE DATE

Section 4 of act Mar. 3, 1933, provided: "This title [enacting sections 10a to 10c of this title] shall take effect on the date of its enactment [Mar. 3, 1933], but shall not apply to any contract entered into prior to such effective date."

#### SEPARABILITY OF PROVISIONS

Section 5 of act Mar. 3, 1933, provided: "If any provision of this Act [enacting sections 10a to 10c of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42 of this title; title 15 section 2507; title 19 sections 2512, 2513, 2516.

#### § 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words "*Provided, however,*" shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable. (Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024.)

#### EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

SECTION 1. As used in this order, (a) the term "materials" includes articles and supplies, (b) the term "executive agency" includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term "bid or offered price of materials of foreign origin" means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [41 U.S.C. 10a to 10c], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States; provided that when the bid or offered price of materials of foreign origin amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [41 U.S.C. 252(b)], section 2(b) of the Armed Services Procurement Act of 1947, as amended [41 U.S.C. 151(b)], and section 202 of the Small Business Act of 1953 [15 U.S.C. 631]; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the President through the Director of the Bureau of the Budget [now Office of Management and Budget] by the official making the determination within 30 days thereafter.

§ 11. No contracts or purchases unless authorized or under adequate appropriation; report to the Congress

(a) No contract or purchase on behalf of the United States shall be made, unless the same is

authorized by law or is under an appropriation adequate to its fulfillment, except in the Departments of the Army, Navy, and Air Force, for clothing, subsistence, forage, fuel, quarters, transportation, or medical and hospital supplies, which, however, shall not exceed the necessities of the current year.

(b) The Secretary of Defense shall immediately advise the Congress of the exercise of the authority granted in subsection (a) of this section, and shall report quarterly on the estimated obligations incurred pursuant to the authority granted in subsection (a) of this section.

(R.S. § 3732; June 12, 1906, ch. 3078, 34 Stat. 255; Oct. 15, 1966, Pub. L. 89-687, title VI, § 612(e), 80 Stat. 993.)

#### CODIFICATION

R.S. § 3732 derived from act Mar. 2, 1861, ch. 84, § 10, 12 Stat. 220.

The Department of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501, and Secretary of Defense Transfer Orders No. 6, eff. Jan. 15, 1948; No. 12 [§ 1(13)], May 14, 1948; No. 39, May 18, 1949, and No. 40 [App. B(115)], July 22, 1949. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947, were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1950, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

#### AMENDMENTS

1906—Pub. L. 89-687 designated existing provisions as subsec. (a) and added subsec. (b).

1906—Act June 12, 1906, inserted "medical and hospital supplies".

#### CROSS REFERENCES

Contracts for Indian supplies in advance of appropriations, see section 99 of Title 25, Indians.

Expenditure by any department in excess of appropriations prohibited, see section 1341 of Title 31, Money and Finance.

Printing appropriations not to be exceeded, see section 1102 of Title 44, Public Printing and Documents.

Projects under Mexican treaties, authority to enter into contracts beyond amount appropriated, notwithstanding this section, see section 277d-3 of Title 22, Foreign Relations and Intercourse.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 277d-3.

§ 11a. Contracts for fuel by Secretary of the Army without regard to current fiscal year

When, in the opinion of the Secretary of the Army, it is in the interest of the United States so to do, he is authorized to enter into contracts and to incur obligations for fuel in sufficient quantities to meet the requirements for one year without regard to the current fiscal year, and payments for supplies delivered under such contracts may be made from funds appropriated for the fiscal year in which the contract is made, or from funds appropriated or which may be appropriated for such supplies for the ensuing fiscal year.

(June 30, 1921, ch. 33, § 1, 42 Stat. 78.)

#### CODIFICATION

This section was formerly classified to section 668 of Title 31 prior to the general revision and enactment of Title 31, Money and Finance, by Pub. L. 97-258, § 1, Sept. 13, 1982, 96 Stat. 877.

#### CHANGE OF NAME

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3010 to 3013 continued the Department of the Army under the administrative supervision of a Secretary of the Army.

#### TRANSFER OF FUNCTIONS

For transfer of certain procurement and related functions and property, and functions relating to finance and fiscal matters, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 6, eff. Jan. 15, 1948; 25, Oct. 14, 1948; 39, May 18, 1949; and 40 [App. B(93)], July 22, 1949.

Public Buildings Administration was abolished by act June 30, 1949, ch. 288, title 1, § 103, 63 Stat. 380, and functions were transferred to General Services Administration. See section 753 of Title 40, Public Buildings, Property, and Works.

Public Buildings Branch of Procurement Division (Bureau of Federal Supply) of Treasury Department transferred to Public Buildings Administration within Federal Works Agency, see Reorg. Plan No. 1 of 1939, §§ 301, 303, eff. July 1, 1939, 4 F.R. 2729, 53 Stat. 1426, 1427, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of procurement of supplies, services, stores, etc., exercised by any other agency were transferred to the Procurement Division in the Treasury Department by Ex. Ord. No. 6166, § 1, June 10, 1933, set out as a note under section 901 of Title 5. The name of the Procurement Division was changed to Bureau of Federal Supply by Treasury Department Order 73 dated Nov. 19, 1946. The Bureau was transferred on July 1, 1949, to the General Services Administration, where it functions as the Federal Supply Service, pursuant to act June 30, 1949, ch. 268, § 102, 63 Stat. 380.

§ 12. No contract to exceed appropriation

No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.

(R.S. § 3733.)

#### CODIFICATION

R.S. § 3733 derived from act July 25, 1868, ch. 233, § 3, 15 Stat. 177.

#### CROSS REFERENCES

Contracting officer paying larger amount than specific appropriation, punishment for, see section 435 of Title 18, Crimes and Criminal Procedure.

Foreign military personnel, furnishing facilities for training of without regard to this section, see section 2396 of Title 22, Foreign Relations and Intercourse.

Making of contracts for public buildings on partial appropriations, see section 261 of Title 40, Public Buildings, Property, and Works.

Projects under Mexican treaties, authority to enter into contracts beyond amount appropriated, notwithstanding this section, see section 277d-3 of Title 22, Foreign Relations and Intercourse.

Provisions inapplicable to lease-purchase contracts, see section 356 of Title 40, Public Buildings, Property, and Works.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 sections 277d-3, 2398; title 40 section 356.

#### § 13. Contracts limited to one year

Except as otherwise provided, it shall not be lawful for any of the executive departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

(R.S. § 3735.)

#### CODIFICATION

R.S. § 3735 derived from Res. Jan. 31, 1868, No. 8, 15 Stat. 246; Res. Mar. 24, 1874, No. 6, 18 Stat. 286.

"Except as otherwise provided," was first inserted by the Revisers of the 1934 edition of the Code.

#### EXEMPTION OF FUNCTIONS

Functions authorized by Foreign Assistance Act of 1961, as amended, as exempt, see Ex. Ord. No. 11223, eff. May 12, 1965, 30 F.R. 6635, set out as a note under section 2393 of Title 22, Foreign Relations and Intercourse.

#### SECTION INAPPLICABLE TO ARMED SERVICES AND NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Section inapplicable to procurement of supplies or services by Armed Services and National Aeronautics and Space Administration, see section 2314 of Title 10, Armed Forces.

#### CROSS REFERENCES

Contracts by Secretary of the Treasury for manufacture of distinctive paper for United States securities, see section 5114 of Title 31, Money and Finance.

General Services Administration, section inapplicable to procurement of property or services, see section 260 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 260 of this title; title 10 section 2314.

#### § 13a. Repealed. Pub. L. 86-682, § 12(c), Sept. 2, 1960, 74 Stat. 710

Section, Joint Res. Mar. 24, 1874, No. 6, 18 Stat. 286, excepted mail bags, mail locks, and keys from the provisions of section 13 of this title.

#### § 14. Restriction on purchases of land

No land shall be purchased on account of the United States, except under a law authorizing such purchase.

(R.S. § 3736.)

#### CODIFICATION

R.S. § 3738 derived from act May 1, 1820, ch. 52, § 7, 3 Stat. 568.

#### CROSS REFERENCES

Provisions inapplicable to lease-purchase contracts, see section 356 of Title 40, Public Buildings, Property, and Works.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 section 356.

#### § 15. Transfers of contracts; assignments of claims; set-off against assignee

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency: *Provided*,

1. That in the case of any contract entered into prior to October 9, 1940, no claim shall be assigned without the consent of the head of the department or agency concerned;

2. That in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment;

3. That unless otherwise expressly permitted by such contract any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing;

4. That in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section, shall constitute a valid assignment for all purposes.

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

Any contract of the Department of Defense, the General Services Administration, the Atomic Energy Commission, or any other department or agency of the United States designated by the President, except any such con-

tract under which full payment has been made, may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off, and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of (1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract, (2) fines, (3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract), or (4) taxes, social security contributions, or the withholding or non-withholding of taxes or social security contributions, whether arising from or independently of such contract.

Except as herein otherwise provided, nothing in this section, shall be deemed to affect or impair rights or obligations heretofore accrued. (R.S. § 3737; Oct. 9, 1940, ch. 779, § 1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41.)

#### CODIFICATION

R.S. § 3737 derived from act July 17, 1862, ch. 200, § 14, 12 Stat. 596.

#### AMENDMENTS

1951—Act May 15, 1951, made it clear that a bank or other financing institution taking an assignment of claims pursuant to this section would not be subject to later recovery by the Government of amounts previously paid to the bank by the assignee except in cases of fraud.

1940—Act Oct. 9, 1940, added the second and third paragraphs of this section.

#### TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

#### NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act (Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255) not applicable to the powers and authorities conferred by this section and actions taken hereunder, see section 1651 of Title 50, War and National Defense.

#### MONEYS DUE UNDER LETTERS OF COMMITMENT ISSUED IN CONNECTION WITH DISPOSITION OF SURPLUS AGRICULTURAL COMMODITIES

Moneys due under letters of commitment issued against funds or guaranties of funds supplied by Commodity Credit Corporation in connection with disposition of surplus agricultural commodities to foreign countries, as assignable under the Assignment of Claims Act of 1949, which constitutes this section and former section 203 of Title 31, Money and Finance, see section 1702 of Title 7, Agriculture.

#### CROSS REFERENCES

Assignment of claims, generally, see section 3727 of Title 31, Money and Finance.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 2392; title 50 section 1651; title 50 App. section 1215.

§ 16. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section, R.S. § 3744; acts June 15, 1917, ch. 29, § 1, 40 Stat. 198; Feb. 4, 1929, ch. 146, § 1, 45 Stat. 1147, related to requirement that contracts made by the Secretaries of War, Navy and Interior be in writing, and that copies thereof be filed in the returns office of the Department of the Interior.

§§ 16a to 16d. Omitted

#### CODIFICATION

Section 16a, acts June 25, 1910, ch. 431, § 23, 36 Stat. 861; May 18, 1916, ch. 125, § 1, 39 Stat. 126; Jan. 12, 1927, ch. 27, 44 Stat. 936, authorized purchases by Department of Interior without compliance with section 16 of this title.

Section 16b, acts Apr. 17, 1936, ch. 233, § 1, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, § 1, 52 Stat. 393; June 16, 1939, ch. 208, § 1, 53 Stat. 834; June 18, 1940, ch. 396, § 1, 54 Stat. 474, authorized purchases by Botanic Garden without compliance with section 16 of this title.

Section 16c, act May 13, 1926, ch. 294, § 1, 44 Stat. 547, authorized purchases by Architect of Capitol without compliance with section 16 of this title.

Section 16d, act Aug. 4, 1939, ch. 416, § 13, 53 Stat. 1197, authorized purchases by Bureau of Reclamation without compliance with section 16 of this title.

§§ 17 to 19. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section 17, R.S. § 3745, provided that an affidavit be affixed to the return of contract required by section 16 of this title.

Section 18, R.S. § 3746, provided punishment for failure to make returns of contracts as required by sections 16 and 17 of this title.

Section 19, R.S. § 3747, imposed duty on Secretaries of War, Navy, and Interior to furnish officers with letters of instruction relating to their duties under sections 17 and 18, contract forms, and affidavits, to insure uniformity.

#### § 20. Deposit of contracts

All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the General Accounting Office: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.

(R.S. § 3743; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; July 31, 1894, ch. 174, § 18, 28 Stat. 210;

June 10, 1921, ch. 18, §§ 304, 310, 42 Stat. 24, 25.)

#### CODIFICATION

R.S. § 3743 derived from act July 18, 1798, ch. 85, § 6, 1 Stat. 610.

Section was formerly classified to section 219 of title 5 prior to the general revision and reenactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

#### AMENDMENTS

1894—Act July 31, 1894, amended the section to read “shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.”

1877—Act Feb. 27, 1877, inserted after the words “in the office of the First Comptroller of the Treasury of the United States” the words “the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof.”

#### TRANSFER OF FUNCTIONS

The offices of the six auditors of the Treasury Department were abolished and all powers and duties conferred or imposed by law upon such officers were transferred and vested in the General Accounting Office by act June 10, 1921.

#### CROSS REFERENCES

Copies of all contracts made by Commissioner of Indian Affairs to be furnished General Accounting Office, see section 96 of Title 25, Indians.

General Accounting Office, see section 701 et seq. of Title 31, Money and Finance.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20a, 20b of this title; title 16 section 799.

#### § 20a. Exemption from deposit of contracts concerning national-forest lands

Permits, contracts, agreements, or other instruments requiring payments into the Treasury of the United States on account of sale of national-forest products, use of national-forest land, or other sources of national-forest revenue, including contributions by cooperators in connection with authorized activities of the Forest Service, shall be exempt from the provisions of section 20 of this title, when the permit or other instrument does not require payment to the Government in excess of \$300 in any one fiscal year.

(June 15, 1940, ch. 367, 54 Stat. 398.)

#### § 20b. Exemption from deposit of leases, contracts, etc., concerning use of lands or waters under jurisdiction of Department of the Interior

Leases, permits, licenses, contracts, agreements, and other instruments providing for payments to the United States on account of the use of lands or waters under the jurisdiction of the Department of the Interior, or on account of the sale of products of such lands or waters, or on account of other transactions incident to the administration of such lands or waters, including contributions by cooperators, but excluding sales of used equipment, shall be exempt from the provisions of section 20 of this

title, when the lease or other instruments do not require payment to the Government in excess of \$300 in any one fiscal year: *Provided, however*, That the Secretary of the Interior may prescribe from time to time regulations requiring that originals or copies of any class or group of documents within the foregoing exemption, in the circumstances and upon the conditions designated by him in such regulations, shall be deposited in the General Accounting Office for audit purposes.

(Nov. 28, 1943, ch. 328, 57 Stat. 592.)

#### § 21. Repealed. Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1069

Section, acts July 31, 1894, ch. 174, § 22, 28 Stat. 210; June 10, 1921, ch. 18, §§ 304, 310, 42 Stat. 24, 25, provided that the heads of the several executive departments and the proper officers of other Government establishments, not within the jurisdiction of any executive department, make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them before their transmission to the General Accounting Office, and for the execution of other requirements of section 20 of this title, insofar as the same related to the several departments or establishments. See section 3521(a) of Title 31, Money and Finance.

#### § 22. Interest of Member of Congress

In every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. Nor shall the provisions of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act [7 U.S.C. 601 et seq.], the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933 [12 U.S.C. 1461 et seq.], and shall not apply to contracts or agreements of a kind which the Secretary of Agriculture may enter into with farmers: *Provided*, That such exemption shall be made a matter of public record.

(R.S. § 3741; Feb. 27, 1877, ch. 69, § 1, 19 Stat. 249; Jan. 25, 1934, ch. 5, 48 Stat. 337; June 27, 1934, ch. 847, title V, § 510, 48 Stat. 1264; Aug. 26, 1937, ch. 821, 50 Stat. 838.)

#### REFERENCES IN TEXT

The Agricultural Adjustment Act, referred to in text, is title 1 of act May 12, 1933, ch. 25, 46 Stat. 31, as amended, which is classified generally to chapter 26 (§ 601 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 7 and Tables.

The Federal Farm Loan Act, referred to in text, is act July 17, 1916, ch. 245, 39 Stat. 360, as amended, and was classified principally to sections 641 et seq. of Title 12, Banks and Banking. The Federal Farm Loan Act, as amended, was repealed by section 5.26(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby “shall be deemed to refer to comparable provisions of this Act”. For fur-

ther details, see notes set out under section 2001 of Title 12. For complete classification of the Federal Farm Loan Act to the Code prior to such repeal, see Tables.

The Emergency Farm Mortgage Act of 1933, referred to in text, is title II of act May 12, 1933, ch. 25, 48 Stat. 31. Such title II was substantially repealed by act June 30, 1947, ch. 166, title II, § 206(c), 61 Stat. 208; act Aug. 6, 1953, ch. 335, § 19, 67 Stat. 400; act Oct. 4, 1961, Pub. L. 87-353, § 3(a), (b), (w), 75 Stat. 773, 774; act Dec. 10, 1971, Pub. L. 92-181, title V, § 5.26(a), 85 Stat. 624. For complete classification of this Act to the Code, see Tables.

The Federal Farm Mortgage Corporation Act, referred to in text, is act Jan. 31, 1934, ch. 7, 48 Stat. 344, which enacted section 992a of Title 12, Banks and Banking, and amended sections 347, 355, 723, 772, 781, 897, 1016, 1020, 1020a, 1020b, 1020c, 1020d to 1020h, 1061, 1131i, 1138b and 1138d of Title 12, has been substantially repealed. For complete classification of this Act to the Code, see Tables.

The Farm Credit Act of 1933, referred to in text, is act June 16, 1933, ch. 98, 48 Stat. 2, as amended, and was classified principally to subchapter IV (§ 1131 et seq.) of chapter 7 of Title 12, Banks and Banking. The Farm Credit Act of 1933, as amended, was repealed by section 5.28(a) of the Farm Credit Act of 1971, Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 624. Section 5.26(a) of the Farm Credit Act of 1971 also provided that all references in other legislation to the Acts repealed thereby "shall be deemed to refer to comparable provisions of this Act". For further details, see notes set out under section 2001 of Title 12. For complete classification of the Farm Credit Act of 1933 to the Code prior to such repeal, see Tables.

The Home Owners' Loan Act of 1933, referred to in text, is act June 13, 1933, ch. 64, 48 Stat. 128, as amended, which is classified generally to chapter 12 (§ 1461 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1461 of Title 12 and Tables.

#### CODIFICATION

R.S. § 3741 derived from act Apr. 21, 1808, ch. 48, § 3, 2 Stat. 484.

#### AMENDMENTS

1937—Act Aug. 26, 1937, added the provision at the end beginning with "and shall not apply".

1934—Act June 27, 1934, inserted "the Federal Farm Loan Act, the Emergency Farm Mortgage Act of 1933, the Federal Farm Mortgage Corporation Act, the Farm Credit Act of 1933, and the Home Owners' Loan Act of 1933".

Act Jan. 25, 1934, added "Nor shall the provision of this section apply to any contracts or agreements heretofore or hereafter entered into under the Agricultural Adjustment Act".

1877—Act Feb. 27, 1877, inserted "or Delegate to" after "that no Member of".

#### CROSS REFERENCES

Acquisition of land for flood control, applicability of this section, see section 702m of Title 33, Navigation and Navigable Waters.

Commodity Credit Corporation, agreements of, except agreements with farmers participating in Corporation's program, subject to this section, see section 714f of Title 15, Commerce and Trade.

Contracts by Members of Congress and exemptions with respect to certain contracts, see sections 431 and 433 of Title 18, Crimes and Criminal Procedure.

Secretary of State contracts with foreign or domestic agencies for purposes of United States exchange program excepted from this section, see section 1472 of Title 22, Foreign Relations and Intercourse.

Section inapplicable to crop-insurance agreements made under the Federal Crop Insurance Act, see section 1514 of Title 7, Agriculture.

Section inapplicable to loans or payments made under sections 590h and 590o of Title 16, and the Agricultural Adjustment Act of 1938, except section 1383, see section 1386 of Title 7.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1514; title 10 section 2323; title 15 section 714f; title 22 sections 1472, 2676; title 33 section 702m.

§ 23. Orders or contracts for material placed with Government-owned establishments deemed obligations

All orders or contracts for work or material or for the manufacture of material pertaining to approved projects heretofore or hereafter placed with Government-owned establishments shall be considered as obligations in the same manner as provided for similar orders or contracts placed with commercial manufacturers or private contractors, and the appropriations shall remain available for the payment of the obligations so created as in the case of contracts or orders with commercial manufacturers or private contractors.

(June 5, 1920, ch. 240, 41 Stat. 075; July 1, 1922, ch. 259, 42 Stat. 812; June 2, 1937, ch. 293, 50 Stat. 245.)

#### AMENDMENTS

1937—Act June 2, 1937, continued this section in effect.

1922—Act July 1, 1922, inserted "for work or material near the beginning," "or contracts" following "similar orders" and "or private contractors" following "commercial manufacturers" in two places.

§ 24. Contracts for transportation of moneys, hullion, coin, and securities

Whenever it is practicable contracts for the transportation of moneys, bullion, coin, notes, bonds, and other securities of the United States, and paper shall be let to the lowest responsible bidder therefor, after notice to all parties having means of transportation.

(July 7, 1884, ch. 332, 23 Stat. 204.)

#### CODIFICATION

Section is from Sundry Civil Appropriation Act July 7, 1884, fiscal year 1885.

§ 24a. Omitted

#### CODIFICATION

Section, acts June 16, 1933, ch. 101, § 5, 48 Stat. 305; Apr. 24, 1935, ch. 78, 49 Stat. 181; Aug. 29, 1935, ch. 816, 49 Stat. 991, provided for cancellation on or before March 31, 1936, of contracts for transportation entered into prior to June 16, 1933.

§ 25. Repealed. Feb. 19, 1948, ch. 65, § 11(a), 62 Stat. 25

Section, R.S. § 3729, related to contracts for hunting. See section 2301 et seq. of Title 10, Armed Forces.

§ 26. Repealed. June 30, 1949, ch. 288, title VI, § 602(a)(26), 63 Stat. 401, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583

Section, acts Mar. 4, 1915, ch. 147, § 5, 38 Stat. 1161; May 29, 1928, ch. 901, § 1(5), 45 Stat. 986, related to exchange of typewriters and adding machines in part



payment for new machines. See section 481 of Title 40, Public Buildings, Property, and Works.

#### EFFECTIVE DATE OF REPEAL

Repeal of section effective July 1, 1949, see section 605 of act June 30, 1949.

§ 27. Repealed. Oct. 31, 1951, ch. 654, § 1(109), 65 Stat. 705

Section, act June 5, 1920, ch. 235, § 7, 41 Stat. 947, which related to disposition of typewriting machines by Government departments and establishments. See sections 481, 483, and 484 of Title 40, Public Buildings, Property, and Works.

§§ 28 to 34. Omitted

#### CODIFICATION

Section 28, act June 16, 1934, ch. 553, § 1, 48 Stat. 974, related to adjustment and settlement of claims by persons who entered into contracts with the United States prior to Aug. 10, 1933 and claim loss due to compliance with codes of fair competition.

Section 29, act June 16, 1934, ch. 553, § 2, 48 Stat. 975, related to the amount allowed for settlement.

Section 30, act June 16, 1934, ch. 553, § 3, 48 Stat. 975, related to limitation on the amount of profits.

Section 31, act June 16, 1934, ch. 553, § 4, 48 Stat. 975, related to the time for presentment of claims.

Section 32, act June 16, 1934, ch. 553, § 5, 48 Stat. 975, authorized appropriations for the settlement of claims.

Section 33, act June 16, 1934, ch. 553, § 6, 48 Stat. 975, related to the procedure for settlement of claims and reservation of the right to prosecute for fraud and criminal conduct.

Section 34, act Aug. 29, 1935, ch. 815, 49 Stat. 990, provided that bids made subject to codes of fair competition prior to Aug. 29, 1935 should not be rejected where bidder agreed to be subject to Acts of Congress requiring observance of minimum wages, maximum hours, or limitations as to age of employees in performance of contracts, with Federal agencies.

§ 35. Contracts for materials, etc., exceeding \$10,000; representations and stipulations

In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to

be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs (1) or (2) of subsection (b) of section 207 of title 29;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract, except that this section, or any other law or Executive order containing similar prohibitions against purchase of goods by the Federal Government, shall not apply to convict labor which satisfies the conditions of section 1761(c) of title 18; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

(June 30, 1936, ch. 881, § 1, 49 Stat. 2036; May 13, 1942, ch. 306, 56 Stat. 277; Pub. L. 90-351, title I, § 827(b), as added Dec. 27, 1979, Pub. L. 96-157, § 2, 93 Stat. 1215.)

#### AMENDMENTS

1979—Subsec. (d). Pub. L. 90-351, § 827(b), as added by Pub. L. 96-157, added provisions relating to convict labor which satisfies the conditions of section 1761(c) of title 18.

1942—Subsec. (c). Act May 13, 1942, added proviso.

#### SHORT TITLE

Sections 35 to 45 of this title are popularly known as the Walsh-Healey Act.

#### EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON MADE GOODS

Amendment of this section by Pub. L. 90-351, § 827(b), as added Pub. L. 96-157, not applicable unless representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by such amendment and such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services, see section 827(c) of Pub. L. 90-351, as added Pub. L. 96-157, set out as a note under section 1761 of Title 18, Crimes and Criminal Procedure.

**EXCEPTIONS AND EXEMPTIONS**

7 F.R. 9399 (amending Exemption Order Apr. 21, 1942, 7 F.R. 3003), which exempted female persons under 18 years of age from the provisions of subsec. (d) of this section, was superseded by 10 F.R. 10438.

**CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS**

Provisions of sections 35 to 45 of this title as applicable to Government agencies exercising certain contracting authority in connection with national-defense functions, see section 13 of Ex. Ord. No. 10789, set out as a note under section 1431 of Title 50, War and National Defense.

**CROSS REFERENCES**

Contracts for construction or alteration of naval vessels to be in accordance with sections 35 to 45 of this title, see section 7299 of Title 10, Armed Forces.

**ACT REFERRED TO IN OTHER SECTIONS**

The Walsh-Healey Act is referred to in sections 253, 356 of this title; title 10 sections 2304, 7299; title 29 sections 251 to 256, 258, 259, 262, 653; title 30 section 846; title 39 section 410; title 40 section 329.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 36, 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258, 356 of this title; title 10 sections 2304, 7299; title 15 section 637; title 39 section 410.

§ 36. Liability for contract breach; cancellation; completion by Government agency; employee's wages

Any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 35 of this title shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 35 of this title may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice

to the contractor of the withholding or recovery of such sums by the United States of America.

(June 30, 1936, ch. 881, § 2, 49 Stat. 2037.)

**CROSS REFERENCES**

Conduct and argument of cases by Attorney General, see section 518 of Title 28, Judiciary and Judicial Procedure.

Power of Solicitor General to assist Attorney General, see section 505 of Title 28.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 43a of this title.

§ 37. Distribution of list of persons breaching contract; future contracts prohibited

The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by sections 35 to 45 of this title. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

(June 30, 1936, ch. 881, § 3, 49 Stat. 2037.)

**CROSS REFERENCES**

Exemptions and exceptions to section 35 of this title, see note set out under that section.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 43a of this title.

§ 38. Administration of Walsh-Healey provisions; officers and employees; appointment; investigations; rules and regulations

The Secretary of Labor is authorized and directed to administer the provisions of sections 35 to 45 of this title and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of said sections and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, subject to chapter 51 and subchapter III of chapter 53 of title 5, an administrative officer, and such attorneys and experts, and other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of sections 35 to 45 of this title. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as provided in sections 35 to 45 of this title, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 4, 49 Stat. 2038; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972.)

#### CODIFICATION

Provisions of second sentence of this section that authorized the Secretary to appoint an administrative officer and such attorneys and experts "without regard to the provisions of the civil service laws" were omitted as obsolete. Such appointments are subject to the civil service laws unless specifically excepted by such laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 28, 1940, ch. 919, title 1, § 1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

"Chapter 51 and subchapter III of chapter 53 of title 5" were substituted in text for "the Classification Act of 1949, as amended" on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

#### AMENDMENTS

1949—Act Oct. 28, 1949, substituted reference to the "Classification Act of 1949" for the "Classification Act of 1923".

#### REPEALS

Act Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89-554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

#### TRANSFER OF FUNCTIONS

For transfer of functions of all other officers, employees, and agencies of the Department of Labor, with certain exceptions, to the Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 84 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43a, 353 of this title; title 40 section 333.

**§ 39. Hearings on Walsh-Healey provisions by Secretary of Labor; witness fees; failure to obey order; punishment**

Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of sections 35 to 45 of this title, and on complaint of a breach or violation of any representation or stipulation as provided in said sections, the Secretary of Labor, or an impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession within the jurisdiction of which the inquiry is carried on, or within the

jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of sections 35 to 45 of this title.

(June 30, 1936, ch. 881, § 5, 49 Stat. 2038; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107.)

#### CODIFICATION

As originally enacted, the words "or the district court of the United States for the District of Columbia," were set out following "Territory or possession". Act June 25, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "district court of the United States for the District of Columbia". The words "United States District Court for the District of Columbia" have been deleted entirely as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which states that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district", and section 88 of title 28 which states that "the District of Columbia constitutes one judicial district".

#### FEDERAL RULES OF CIVIL PROCEDURE

Findings by the Court, see rule 52, Title 28, Appendix, Judiciary and Judicial Procedure.  
Subpoena, see rule 45.

#### FEDERAL RULES OF CRIMINAL PROCEDURE

Contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.  
Subpoena, see rule 17.

#### CROSS REFERENCES

Criminal contempt, see sections 401, 402, 3285, 3691, 3771, and 3772 of Title 18, Crimes and Criminal Procedure.

Exemptions and exceptions to section 35 of this title, see note set out under that section.

Per diem and mileage of witnesses, see section 1821 of Title 28, Judiciary and Judicial Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43a, 353 of this title; title 33 section 941; title 40 section 333.

**§ 40. Exceptions from Walsh-Healey provisions; modification of contracts; variations; overtime; suspension of representations and stipulations**

Upon a written finding by the head of the contracting agency or department that the in-

clusion in the proposal or contract of the representations or stipulations set forth in section 35 of this title will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of sections 35 to 45 of this title respecting minimum rates of pay and maximum hours of labor or the extent of the application of said sections to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: *Provided*, That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all of the representations and stipulations contained in section 35 of this title. (June 30, 1936, ch. 881, § 6, 49 Stat. 2038; June 28, 1940, ch. 440, title I, § 13, 54 Stat. 681.)

#### AMENDMENTS

1940—Act June 28, 1940, added the proviso.

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

President's authority to make exceptions in case of contracts for construction, alteration, etc. of naval vessels, see section 7299 of Title 10, Armed Forces.

#### § 41. "Person" defined in Walsh-Healey provisions

Whenever used in sections 35 to 45 of this title, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(June 30, 1936, ch. 881, § 7, 49 Stat. 2039; Nov. 6, 1978, Pub. L. 95-598, title III, § 326, 92 Stat. 2679.)

#### AMENDMENTS

1978—Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title.

#### § 42. Effect of Walsh-Healey provisions on other laws

The provisions of sections 35 to 45 of this title shall not be construed to modify or amend Title III of the act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time [40 U.S.C. 276a et seq.], nor the labor provisions of Title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of sections 35 to 45 of this title be construed to modify or amend chapter 307 and section 4162 of title 18.

(June 30, 1936, ch. 881, § 8, 49 Stat. 2039.)

#### REFERENCES IN TEXT

Title III of the act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), referred to in text, is act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, as amended, popularly known as the Buy American Act, which enacted sections 10a to 10c of this title and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

The Act approved Mar. 3, 1931 (commonly known as the Bacon-Davis Act), referred to in text, probably means act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, popularly known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

The National Industrial Recovery Act, referred to in text, is act June 16, 1933, ch. 90, 48 Stat. 195. Title II of the National Industrial Recovery Act was classified principally to subchapter I (§ 401 et seq.) of chapter 8 of Title 40, Public Buildings, Property, and Works, and was terminated June 30, 1943, by act June 27, 1942, ch. 450, § 1, 56 Stat. 410. For complete classification of this Act to the Code, see Tables.

Section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935, referred to in text, is act Apr. 8, 1935, ch. 48, § 7, 49 Stat. 115, which is not classified to the Code.

#### CODIFICATION

"Chapter 307 and section 4162 of title 18" was substituted for "the Act entitled 'An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes', approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934" on authority of act June 25, 1948, ch. 645, 62 Stat. 683, the first section of which enacted Title 18, Crimes and Criminal Procedure. Prior to the enactment of Title 18, the act of May 27,

1930, as amended, had been classified to sections 744a to 744n of Title 18.

#### CROSS REFERENCES

Construction of naval vessels as governed by sections 35 to 45 of this title, see section 7299 of Title 10, Armed Forces.

Exemptions and exceptions to section 35 of this title, see note set out under that section.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title.

§ 43. Walsh-Healey provisions not applicable to certain contracts

Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(June 30, 1936, ch. 881, § 9, 49 Stat. 2039.)

#### REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code see section 609 of Title 47 and Tables.

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

President's authority to make exceptions in case of construction contracts for naval vessels, see section 7299 of Title 10, Armed Forces.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title.

§ 43a. Administrative procedure provisions

##### (a) Applicability

Notwithstanding any provision of section 553 of title 5, subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

##### (b) Wage determination; administrative review

All wage determinations under section 35(b) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in chapter 7 of title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government

from any source, who is in any industry to which such wage determination is applicable.

##### (c) Judicial review

Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms "locality", "regular dealer", "manufacturer", and "open market".

(June 30, 1936, ch. 881, § 10, as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

#### CODIFICATION

"Section 553 of title 5", "subchapter II of chapter 5, and chapter 7, of title 5", and "chapter 7 of title 5" were substituted for "section 1003 of title 5", "such Act [meaning the Administrative Procedure Act]", and "section 1009 of title 5", respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 831, the first section of which enacted Title 5, Government Organization and Employees.

§ 44. Separability of Walsh-Healey provisions

If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(June 30, 1936, ch. 881, § 11, formerly § 10, 49 Stat. 2039, renumbered June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

§ 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages

Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(June 30, 1936, ch. 881, § 12, formerly § 11, 49 Stat. 2039, renumbered June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308.)

#### CROSS REFERENCES

Exemptions and exceptions to section 35 of this title, see note set out under that section.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 43a, 44, 258, 356 of this title; title 10 sections 2304, 7299; title 30 section 410.

**§ 46. Committee for Purchase from the Blind and Other Severely Handicapped**

**(a) Establishment**

There is established a committee to be known as the Committee for Purchase from the Blind and Other Severely Handicapped (hereafter in sections 46 to 48c of this title referred to as the "Committee"). The Committee shall be composed of fifteen members appointed as follows:

(1) The President shall appoint as a member one officer or employee from each of the following: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Health and Human Services, the Department of Commerce, the Veterans' Administration, the Department of Justice, the Department of Labor, and the General Services Administration. The head of each such department and agency shall nominate one officer or employee in his department or agency for appointment under this paragraph.

(2)(A) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of the blind.

(B) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of other severely handicapped individuals.

(C) The President shall appoint one member from persons who are not officers or employees of the Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(D) The President shall appoint one member from persons who are not officers or employees of the Government and who represent severely handicapped individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely handicapped individuals.

**(b) Vacancy**

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

**(c) Chairman**

The members of the Committee shall elect one of their number to be Chairman.

**(d) Terms**

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of subsection (a) of this section shall be appointed for terms of five years. Any member appointed to the Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of subsection (a) of this section—

(A) one shall be appointed for a term of three years,

(B) one shall be appointed for a term of four years, and

(C) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed under paragraph (2) of subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member appointed under such paragraph may serve after the expiration of his term until his successor has taken office.

(4) The member first appointed under paragraph (2)(B) of subsection (a) of this section shall be appointed for a term of three years.

**(e) Pay and travel expenses**

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of services for the Committee.

(2) Members of the Committee who are officers or employees of the Government shall receive no additional pay on account of their service on the Committee.

(3) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5.

**(f) Staff**

(1) Subject to such rules as may be adopted by the Committee, the Chairman may appoint and fix the pay of such personnel as the Committee determines are necessary to assist it in carrying out its duties and powers under sections 46 to 48c of this title.

(2) Upon request of the Committee, the head of any entity of the Government is authorized to detail, on a reimbursable basis, any of the personnel of such entity to the Committee to assist it in carrying out its duties and powers under section 46 to 48c of this title.

(3) The staff of the Committee appointed under paragraph (1) shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title 5 relating to classification and General Schedule pay rates.

**(g) Obtaining official data**

The Committee may secure directly from any entity of the Government information necessary to enable it to carry out sections 46 to 48c of this title. Upon request of the Chairman of the Committee, the head of such Government entity shall furnish such information to the Committee.

**(h) Administrative support services**

The Administrator of General Services shall provide to the Committee on a reimbursable

basis such administrative support services as the Committee may request.

(i) Annual report

The Committee shall, not later than December 31 of each year, transmit to the President and to the Congress a report which shall include the names of the Committee members serving in the preceding fiscal year, the dates of Committee meetings in that year, a description of its activities under sections 46 to 48c of this title in that year, and any recommendations for changes in sections 46 to 48c of this title which it determines are necessary.

(June 25, 1938, ch. 697, § 1, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 77; July 25, 1974, Pub. L. 93-358, § 1(1), (2), 88 Stat. 392, 393; Apr. 21, 1976, Pub. L. 94-273, § 8(2), 90 Stat. 378; Oct. 17, 1979, Pub. L. 96-88, title V, § 509(b), 93 Stat. 695.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (e)(1) and (f)(3), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (e)(3), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

AMENDMENTS

1976—Subsec. (i). Pub. L. 94-273 substituted "December 31" for "September 30".

1974—Subsec. (a). Pub. L. 93-358, § 1(1)(A), (B), substituted "Committee for Purchase from Blind and Other Severely Handicapped" for "Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped" and "fifteen" for "fourteen" in provisions preceding par. (1).

Subsec. (a)(2). Pub. L. 93-358, § 1(1)(C), (D), struck out "and other severely handicapped individuals" following "employment of the blind" in subpar. (A), added subpar. (B), and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (d)(1). Pub. L. 93-358, § 1(2)(A), substituted "paragraphs (2), (3), and (4)" for "paragraphs (2) and (3)".

Subsec. (d)(4). Pub. L. 93-358, § 1(2)(B), added par. (4).

1971—Pub. L. 92-28, in substituting subsecs. (a) to (i) for former paragraph, among other changes: renamed Committee on Purchases of Blind-made Products as Committee for Purchase of Products and Services of the Blind and Other Severely Handicapped; increased membership of Committee from seven to fourteen members; provided for appointments from Departments of Defense, Air Force, Health, Education, and Welfare, Justice, and Labor and from Veterans' Administration and General Services Administration; eliminated appointments from Treasury Department and Department of Interior; substituted appointment from Department of the Army for appointment from War Department; required one appointee to be also conversant with problems incident to employment of other severely handicapped individuals; substituted requirement that such appointment be from persons not officers or employees of the Government rather than that he be a private citizen; reenacted provision for Presidential appointment; substituted subsec. (e) pay and travel expenses provisions for former requirement for service of Committee members without additional compensation; incorporated in subsec. (c) provision for selection of a Chairman, substituting "election" for "designation"; and added provisions incorporated in subsecs. (a)(1) (for nomination by head of each department and agency of one officer or employee of the department or agency for appointment under par. (1)), (a)(2)(B), (C), (b), (d), and (f) to (i).

CHANGE OF NAME

"Department of Health and Human Services" was substituted for "Department of Health, Education, and Welfare" in subsec. (a)(1) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92-28 provided that: "The amendment made by the first section of this Act [amending sections 46 to 48 and enacting sections 48a to 48c of this title] shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act [June 23, 1971]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48a, 48b, 48c of this title.

§ 47. Duties and powers of the Committee

(a) Procurement list: publication in Federal Register; additions and removals

(1) The Committee shall establish and publish in the Federal Register a list (hereafter in sections 46 to 48c of this title referred to as the "procurement list") of—

(A) the commodities produced by any qualified nonprofit agency for the blind or by any qualified nonprofit agency for other severely handicapped, and

(B) the services provided by any such agency,

which the Committee determines are suitable for procurement by the Government pursuant to sections 46 to 48c of this title. Such list shall be established and published in the Federal Register before the expiration of the thirty-day period beginning on Aug. 1, 1971, and shall initially consist of the commodities contained, on such date, in the schedule of blind-made products issued by the former Committee on Purchases of Blind-Made Products under its regulations.

(2) The Committee may, by rule made in accordance with the requirements of subsections (b), (c), (d), and (e) of section 553 of title 5, add to and remove from the procurement list commodities so produced and services so provided.

(b) Fair market price; price revisions

The Committee shall determine the fair market price of commodities and services which are contained on the procurement list and which are offered for sale to the Government by any qualified nonprofit agency for the blind or any such agency for other severely handicapped. The Committee shall also revise from time to time in accordance with changing market conditions its price determinations with respect to such commodities and services.

(c) Central nonprofit agency; designation

The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the procurement list among qualified nonprofit agencies for the blind or such agencies for other severely handicapped.



(d) Rules and regulations; blind-made products, priority

(1) The Committee may make rules and regulations regarding (A) specifications for commodities and services on the procurement list, (B) the time of their delivery, and (C) such other matters as may be necessary to carry out the purposes of sections 46 to 48c of this title.

(2) The Committee shall prescribe regulations providing that—

(A) in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind, and

(B) in the purchase by the Government of services offered by nonprofit agencies for the blind or such agencies for other severely handicapped, priority shall, until the end of the calendar year ending December 31, 1976, be accorded to services offered for sale by qualified nonprofit agencies for the blind.

(e) Problems and production methods; study and evaluation

The Committee shall make a continuing study and evaluation of its activities under sections 46 to 48c of this title for the purpose of assuring effective and efficient administration of sections 46 to 48c of this title. The Committee may study (on its own or in cooperation with other public or nonprofit private agencies) (1) problems related to the employment of the blind and of other severely handicapped individuals, and (2) the development and adaptation of production methods which would enable a greater utilization of the blind and other severely handicapped individuals.

(June 25, 1938, ch. 697, § 2, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 79.)

#### AMENDMENTS

1971—Pub. L. 92-28, in substituting subsecs. (a) to (e) for former paragraph, among other changes: extended the provisions to cover commodities and services of agencies for the blind and other severely handicapped, previously limited to brooms and mops and other suitable commodities manufactured by agencies for the blind; added provisions incorporated in subsecs. (a) and (e); incorporated in subsec. (b) provisions for determination of fair market price and price revisions; incorporated in subsec. (c) provisions for designation of a central nonprofit agency, providing for distribution by direct allocation, subcontract, or any other means; incorporated existing provisions in subsec. (d)(1), adding par. (2) thereof; and deleted provision that no change in prices shall become effective prior to expiration of fifteen days from date on which such change is made by the Committee.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-28 effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as a note under section 46 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48a of this title.

#### § 48. Procurement requirements for the Government; nonapplication to prison-made products

If any entity of the Government intends to procure any commodity or service on the pro-

urement list, that entity shall, in accordance with rules and regulations of the Committee, procure such commodity or service, at the price established by the Committee, from a qualified nonprofit agency for the blind or such an agency for other severely handicapped if the commodity or service is available within the period required by that Government entity; except that this section shall not apply with respect to the procurement of any commodity which is available for procurement from an industry established under chapter 307 of title 18, and which, under section 4124 of such title 18, is required to be procured from such industry.

(June 25, 1938, ch. 697, § 3, 52 Stat. 1196; June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 80.)

#### AMENDMENTS

1971—Pub. L. 92-28 extended provisions to cover any commodity or service on the procurement list for former provision for brooms and mops and other suitable commodities, excepted the section from application to prison-made products, and deleted provision for nonapplicability of sections 46 to 58 of this title to cases where brooms and mops were available for procurement from and Federal department or agency and procurement thereof was required under provisions of any law in effect on June 25, 1938, or to cases where brooms and mops were procured outside continental United States.

#### EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-28 effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as a note under section 46 of this title.

#### § 48a. Audit

The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and other records of the Committee and of each agency designated by the Committee under section 47(c) of this title. This section shall also apply to any qualified nonprofit agency for the blind and any such agency for other severely handicapped which have sold commodities or services under sections 46 to 48c of this title but only with respect to the books, documents, papers, and other records of such agency which relate to its activities in a fiscal year in which a sale was made under sections 46 to 48c of this title.

(June 25, 1938, ch. 697, § 4, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 81.)

#### EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

#### § 48b. Definitions

For purposes of sections 46 to 48c of this title—

(1) The term "blind" refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a

degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) The terms "other severely handicapped" and "severely handicapped individuals" mean an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Government and taking into account the views of non-Government entities representing the handicapped) constitutes a substantial handicap to employment and is of such a nature as to prevent the individual under such disability from currently engaging in normal competitive employment.

(3) The term "qualified nonprofit agency for the blind" means an agency—

(A) organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under sections 46 to 48c of this title) during the fiscal year employs blind individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(4) The term "qualified nonprofit agency for other severely handicapped" means an agency—

(A) organized under the laws of the United States or of any State, operated in the interest of severely handicapped individuals who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(B) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) which in the production of commodities and in the provision of services (whether or not the commodities or services are procured under sections 46 to 48c of this title) during the fiscal year employs blind or other severely handicapped individuals for not less than 75 per centum of the man-hours of direct labor required for the production or provision of the commodities or services.

(5) The term "direct labor" includes all work required for preparation, processing, and packing of a commodity, or work directly relating to the performance of a service, but not supervision, administration, inspection, or shipping.

(6) The term "fiscal year" means the twelve-month period beginning on October 1 of each year.

(7) The terms "Government" and "entity of the Government" include any entity of the legislative branch or the judicial branch, any executive agency or military department (as such agency and department are respectively defined by sections 102 and 105 of title 5), the United States Postal Service, and any nonappropriated

fund instrumentality under the jurisdiction of the Armed Forces.

(8) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(June 25, 1938, ch. 697, § 5, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 81, and amended July 25, 1974, Pub. L. 93-358, § 1(3), 88 Stat. 393; Apr. 21, 1976, Pub. L. 94-273, § 3(22), 90 Stat. 377.)

#### AMENDMENTS

1976—Pub. L. 94-273 substituted "October" for "July" in par. (6).

1974—Pub. L. 93-358 added as par. (5) a new definition of the term "direct labor", struck out former par. (6) which had defined the term "direct labor" without reference to work directly relating to the performance of a service, and redesignated former pars. (7), (8), and (9) as (6), (7), and (8), respectively.

#### EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

#### § 48c. Authorization of appropriations

There are authorized to be appropriated to the Committee to carry out sections 46 to 48c of this title \$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years.

(June 25, 1938, ch. 697, § 6, as added June 23, 1971, Pub. L. 92-28, § 1, 85 Stat. 82, and amended July 30, 1973, Pub. L. 93-76, 87 Stat. 176; July 25, 1974, Pub. L. 93-358, § 1(4), 88 Stat. 393.)

#### AMENDMENTS

1974—Pub. L. 93-358 substituted "\$240,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary for the succeeding fiscal years" for "\$200,000 each for the fiscal year ending June 30, 1972, and the next succeeding fiscal year, and \$240,000 for the fiscal year ending June 30, 1974".

1973—Pub. L. 93-76 increased the authorization of appropriation to \$240,000 for the fiscal year ending June 30, 1974.

#### EFFECTIVE DATE

Section effective Aug. 1, 1971, see section 2 of Pub. L. 92-28, set out as an Effective Date of 1971 Amendment note under section 46 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48a, 48b of this title.

#### § 49. Defense employment; honorable discharge from land and naval forces as equivalent to birth certificate

No defense contractor shall deny employment, on account of failure to produce a birth certificate, to any person who submits, in lieu of a birth certificate, an honorable discharge certificate or certificate issued in lieu thereof from the Army, Air Force, Navy, Marine Corps, or Coast Guard of the United States, unless such honorable discharge certificate shows on

its face that such person may have been an alien at the time of its issuance.

(June 22, 1942, ch. 432, § 1, 56 Stat. 375.)

#### CHANGE OF NAME

Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, 503. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 50 of this title.

#### § 50. "Defense contractor" defined

As used in sections 49 and 50 of this title the term "defense contractor" means an employer engaged in—

- (1) the production, maintenance, or storage of arms, armament, ammunition, implements of war, munitions, machinery, tools, clothing, food, fuel, or any articles or supplies, or parts or ingredients of any articles or supplies; or
- (2) the construction, reconstruction, repair, or installation of a building, plant, structure, or facility;

under a contract with the United States or under any contract which the President, the Secretary of the Army, the Secretary of the Air Force, the Secretary of the Navy, or the Secretary of Transportation certifies to such employer to be necessary to the national defense.

(June 22, 1942, ch. 432, § 2, 56 Stat. 376; Aug. 6, 1981, Pub. L. 97-31, § 12(16), 95 Stat. 154.)

#### AMENDMENTS

1981—Pub. L. 97-31 substituted reference to Secretary of Transportation for reference to United States Maritime Commission.

#### CHANGE OF NAME

The Secretary of the Air Force was inserted under the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of such act July 26, 1947. Sections 205(a) and 207(a), (f) of act July 26, 1947 were repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces", which in sections 3010 to 3013 and 8010 to 8013 continued the Departments of the Army and Air Force under the administrative supervision of a Secretary of the Army and a Secretary of the Air Force, respectively.

#### § 51. Fees or kick-backs by subcontractors on negotiated contracts; recovery by United States; conclusive presumptions; withholding of payments

The payment of any fee, commission, or compensation of any kind or the granting of any gift or gratuity of any kind, either directly or indirectly, by or on behalf of a subcontractor, as defined in section 52 of this title, (1) to any

officer, partner, employee, or agent of a prime contractor holding a negotiated contract entered into by any department, agency, or establishment of the United States for the furnishing of supplies, materials, equipment or services of any kind whatsoever; or to any such prime contractor or (2) to any officer, partner, employee, or agent of a higher tier subcontractor holding a subcontract under the prime contract, or to any such subcontractor either as an inducement for the award of a subcontract or order from the prime contractor or any subcontractor, or as an acknowledgment of a subcontract or order previously awarded, is prohibited. The amount of any such fee, commission, or compensation or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid or incurred by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. The amount of any such fee, cost, or expense shall be recoverable on behalf of the United States from the subcontractor or the recipient thereof by setoff of moneys otherwise going to the subcontractor either directly by the United States, or by a prime contractor under any contract or by an action in an appropriate court of the United States. Upon a showing that a subcontractor paid fees, commissions, or compensation or granted gifts or gratuities to an officer, partner, employee, or agent of a prime contractor or of another higher tier subcontractor, in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the cost of such expense was included in the price of the subcontract or order and ultimately borne by the United States. Upon the direction of the contracting department or agency or of the General Accounting Office, the prime contractor shall withhold from sums otherwise due a subcontractor any amount reported to have been found to have been paid by a subcontractor as a fee, commission, or compensation or as a gift or gratuity to an officer, partner, employee, or agent of the prime contractor or another higher tier subcontractor.

(Mar. 8, 1946, ch. 80, § 1, 60 Stat. 37; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 740.)

#### AMENDMENTS

1960—Pub. L. 86-695 inserted "negotiated" preceding "contract" and deleted ", on a cost-plus-a-fixed-fee or other cost reimbursable basis" following "whatsoever" in clause (1), and substituted "setoff" for "set-off" and "contract" for "cost-plus-a-fixed-fee or cost reimbursable contract," preceding "or by an action".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

#### § 52. Definitions

For the purpose of sections 51 to 54 of this title, the term "subcontractor" is defined as any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or to furnish any article or service required for the perform-

ance of a negotiated contract or of a subcontract entered into thereunder; the term "person" shall include any subcontractor, corporation, association, trust, joint-stock company, partnership, or individual; and the term "negotiated contract" means made without formal advertising.

(Mar. 8, 1946, ch. 80, § 2, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 740.)

#### AMENDMENTS

1960—Pub. L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract" in the definition of "subcontractor" and defined the term "negotiated contract".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 51 of this title.

#### § 53. Power of General Accounting Office as to fees and kick-backs

For the purpose of ascertaining whether such fees, commissions, compensation, gifts, or gratuities have been paid or granted by a subcontractor, the General Accounting Office shall have the power to inspect the plants and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a negotiated contract.

(Mar. 8, 1946, ch. 80, § 3, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 741.)

#### AMENDMENTS

1960—Pub. L. 86-695 substituted "negotiated contract" for "cost-plus-a-fixed-fee or cost reimbursable contract".

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

#### § 54. Penalties as to fees and kick-backs

Any person who shall knowingly, directly or indirectly, make or receive any such prohibited payment shall be fined not more than \$10,000 or be imprisoned for not more than two years, or both.

(Mar. 8, 1946, ch. 80, § 4, 60 Stat. 38; Sept. 2, 1960, Pub. L. 86-695, 74 Stat. 741.)

#### AMENDMENTS

1960—Pub. L. 86-695 reenacted section without change.

#### CROSS REFERENCES

Felony defined, see section 1 of Title 18, Crimes and Criminal Procedure.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 52 of this title.

### CHAPTER 2—TERMINATION OF WAR CONTRACTS

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